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10 Attorneys for Plaintiff GREAT AMERICAN INSURANCE COMPANY

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 GREAT AMERICAN INSURANCE  
14 COMPANY,

15 Plaintiff,

16 v.  
17

18 SEQUOIA INSURANCE COMPANY,

19 Defendant.  
20

Case No. 8:15-cv-01161

**GREAT AMERICAN INSURANCE  
COMPANY'S COMPLAINT FOR  
DECLARATORY RELIEF;  
EQUITABLE SUBROGATION; AND  
EQUITABLE CONTRIBUTION**

21  
22 Plaintiff Great American Insurance Company ("Great American"), by and  
23 through its undersigned counsel, hereby files its Complaint for Declaratory Relief  
24 and Equitable Subrogation against Defendant Sequoia Insurance Company  
25 ("Sequoia"), and states as follows:

26 **PARTIES**

27 1. Great American is a corporation organized and existing under the laws  
28 of the State of Ohio with its principal place of business in Cincinnati, Ohio.

1           2.     Great American is informed and believes and thereon alleges that  
2 Sequoia is a corporation organized and existing under the laws of the State of  
3 California with its principal place of business in Monterey, California.

4                               **JURISDICTION AND VENUE**

5           3.     Great American files this action in the United States District Court for  
6 the Central District of California on the basis of diversity of citizenship.

7           4.     This Court has subject matter jurisdiction pursuant to 28 U.S.C  
8 §1332(a)(1), because there is complete diversity between Great American and  
9 Sequoia, and the amount in controversy exceeds \$75,000, exclusive of interest and  
10 costs.

11          5.     Venue is proper in the United States District Court for the Central  
12 District of California under 28 U.S.C. § 1391(b)(1), in that Sequoia is subject to  
13 personal jurisdiction in the State of California and within the Central District of  
14 California.

15                               **GENERAL FACTUAL ALLEGATIONS**

16          6.     Great American files this action to recover from Sequoia amounts that  
17 were paid to defend and indemnify Millennium Community Management, LLC  
18 (“MCM”), in the Superior Court of California, County of Orange action styled *Vera*  
19 *v. Verano at Talega, et al.*, Case No. 30-2014-00702650-CU-PO-CJC (“Underlying  
20 Action”).

21                               **The Underlying Action**

22          7.     On or about February 4, 2014, Alexander J. Vera (“Vera”) commenced  
23 the Underlying Action, naming Verano at Talega Homeowners Association  
24 (“Association”) and MCM, erroneously named as “Millennium Community  
25 Management, Inc.,” as defendants. A true and correct copy of Vera’s Complaint for  
26 Damages filed in the Underlying Action (“Complaint”) is attached hereto as **Exhibit**  
27 **“A.”**

1           8.     In the Underlying Action, Vera sought to recover damages under  
2 theories of negligence and premises liability as a result of severe and debilitating  
3 injuries he sustained when he dived into a swimming pool at a condominium  
4 complex known as Verano at Talega in San Clemente, California (“Property”), for  
5 which MCM served as property manager.

6           9.     In the Complaint, Vera alleged that the defendants, including the  
7 Association and MCM, were liable because they “negligently, carelessly, recklessly,  
8 and unlawfully owned, operated, developed, designed, constructed, built permitted,  
9 licensed, acted upon, secured, managed and maintained [the Property] in a  
10 dangerous condition.”

#### 11                   **MCM’s Responsibilities as the Association’s Management Agent**

12           10.    MCM served as the Association’s management agent pursuant to a  
13 July 15, 2010 agreement entitled “Common Interest Development Contract  
14 Inclusive” (“Contract”) setting forth broad descriptions of the various tasks for  
15 which MCM would be responsible with respect to the Property.

16           11.    According to the Contract, MCM’s responsibilities included, but were  
17 not limited to, tasks associated with the implementation of the decisions of the Board  
18 of Directors for the Association; acting as liaison with contractors; securing bids for  
19 certain repairs, alterations or improvements to the Property; operating an answering  
20 service to field calls from tenants; performing inspections of the Property and  
21 identifying landscape/maintenance issues, other issues as requested by the Board,  
22 and documenting violations for enforcement by the Board.

#### 23                   **The Policies**

##### 24                   **The Sequoia Policy**

25           12.    Great American is informed and believes and thereon alleges that  
26 Sequoia issued Enterprise Insurance Policy No. SBP213777-3, to MCM for the  
27 policy period of March 1, 2011 to March 1, 2012 (“Sequoia Policy”), and that a true  
28 and correct copy of the Sequoia Policy is attached hereto as **Exhibit “B.”**

1           13. Great American is informed and believes and thereon alleges that the  
2 Sequoia Policy contains an applicable limit of \$1 million per occurrence for liability  
3 and medical payments.

4           14. Great American is informed and believes and thereon alleges that the  
5 Sequoia Policy contains the following language relevant to Sequoia's position with  
6 respect to the defense and settlement of claims asserted against MCM in the  
7 Underlying Action:

8           **SECTION II – LIABILITY**

9           **A. Coverages**

10           **1. Business Liability**

11           **a.** We will pay those sums that the insured becomes legally  
12 obligated to pay as damages because of "bodily injury",  
13 "property damage" or "personal and advertising injury" to  
14 which this insurance applies. We will have the right and  
15 duty to defend the insured against any "suit" seeking those  
16 damages. However, we will have no duty to defend the  
17 insured against any "suit" seeking damages for "bodily  
18 injury", "property damage" or "personal and advertising  
19 injury", to which this insurance does not apply. ...

20   \* \* \*

21           **B. Exclusions**

22           **1. Applicable to Business Liability Coverage**

23           This insurance does not apply to:

24   \* \* \*

25           **j. Professional Services**

26           "Bodily injury", "property damage", "personal and  
27 advertising injury" caused by the rendering or failure to  
28

render any professional service. This includes but is not limited to:

\* \* \*

(2) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;

(3) Supervisory, inspection or engineering services;

\* \* \*

**F. Liability and Medical Expenses Definitions**

\* \* \*

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

\* \* \*

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

\* \* \*

**The AMCO Policy**

15. AMCO Insurance Company (“AMCO”) issued Premier Business Owners Policy No. ACP BPH 7814638915 (“AMCO Policy”), to the Association for the policy period of August 10, 2011 to August 10, 2012, containing an applicable limit of \$1 million per occurrence for liability and medical payments.

16. As with the Sequoia Policy, the AMCO Policy contains an exclusion barring coverage for “bodily injury” arising out of the rendering of, or failure to render, “professional services.”

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1 **The Great American Policy**

2 17. Great American issued the Protector Commercial Umbrella Policy No.  
3 UM 2386960, under which the Association was named as an insured by certificate,  
4 effective August 10, 2011 to August 10, 2012 (“Great American Policy”). The  
5 Great American Policy contains a limit of \$5,000,000 for each occurrence in excess  
6 of primary coverage.

7 18. As with the Sequoia Policy and the AMCO Policy, the Great American  
8 Policy contains an exclusion barring coverage for “bodily injury” arising out of the  
9 rendering of, or failure to render, “professional services.”

10 **Sequoia’s Refusal to Defend MCM in the Underlying Action**

11 19. Great American is informed and believes that, after being served with  
12 the Complaint filed in the Underlying Action, MCM tendered its defense and  
13 indemnity to Sequoia, as its primary general liability insurer, under the Sequoia  
14 Policy.

15 20. By letter sent on or about October 27, 2014, Sequoia denied coverage  
16 and refused to defend MCM based upon the alleged application of Exclusion “j.  
17 Professional Services” in the Sequoia Policy (“Professional Services Exclusion”), as  
18 well as the Designated Work Exclusion.

19 21. Neither of the exclusions relied upon by Sequoia to deny coverage  
20 eliminated the potential for coverage for claims asserted against MCM in the  
21 Underlying Action under the Sequoia Policy, and consequently, Sequoia’s refusal to  
22 defend the claims asserted against MCM in the Underlying Action was improper.

23 22. Prior to the settlement of the Underlying Action, Great American and  
24 AMCO repeatedly demanded that Sequoia reconsider its position and agree to  
25 defend and settle the claims asserted against MCM in the Underlying Action, but  
26 Sequoia has continued to insist that the Professional Services Exclusion in the  
27 Sequoia Policy relieved Sequoia of any duty to defend MCM in the Underlying  
28 Action.

**Defense of Claims Asserted Against MCM in the Underlying Action**

23. Great American is informed and believes and thereon alleges that the Summons and Complaint filed in the Underlying Action were served on MCM on or about March 13, 2014.

24. AMCO retained the law firm of Horton, Oberrecht, Kirkpatrick & Martha (“Horton Firm”) to defend the claims asserted against MCM in the Underlying Action.

25. The Horton Firm filed an Answer on behalf of MCM, erroneously named as “Millennium Community Management, Inc.,” on or about April 29, 2014, and began defending the claims asserted against the Association and MCM in the Underlying Action.

26. Great American is informed and believes and thereon alleges that, on or about September 23, 2014, after learning that MCM was erroneously sued under the wrong name as “Millennium Community Management, Inc.,” counsel for Vera amended the Complaint to name MCM as a defendant.

27. At all relevant times during the Underlying Action, MCM’s registration with the California Secretary of State to do business within the State of California had been placed into forfeiture by the Franchise Tax Board, rendering MCM unable to appear in the Underlying Action on its own behalf unless and until its forfeiture was cured.

28. After learning of MCM’s forfeiture status, AMCO intervened in the Underlying Action in order to continue defending against the claims asserted against MCM, through the Horton Firm.

29. As a result of Sequoia’s improper denial of coverage, MCM’s forfeiture status and MCM’s potential exposure to liability exceeding the applicable limits of the primary policy issued by AMCO, Great American joined AMCO in intervening in the Underlying Action to defend the claims asserted against MCM.



**Settlement of the Underlying Action**

30. In or about March 2015, AMCO and Great American settled the Underlying Action on behalf of Verano and MCM for a confidential sum that exceeded the applicable limit of the AMCO Policy. Despite repeated demands from AMCO and Great American, Sequoia refused to engage in settlement discussions or contribute to the settlement.

**AMCO's Assignment of Rights to Great American**

31. AMCO has contractually assigned its rights with respect to the recovery of amounts paid to defend claims asserted against MCM in the Underlying Action, to Great American.

**FIRST CAUSE OF ACTION**

(For Declaratory Relief Regarding Sequoia's Breach of its Duty to Defend Claims Asserted Against MCM in the Underlying Action)

32. Great American hereby incorporates paragraphs 1 through 31 as though fully set forth herein.

33. An actual controversy has arisen and now exists between Great American and Sequoia in that Great American contends and is informed and believes that Sequoia denies that it owed a duty to defend claims asserted against MCM in the Underlying Action.

34. Great American desires a judicial determination that Sequoia had a duty to defend, and breached its duty to defend, the claims asserted against MCM in the Underlying Action.

**SECOND CAUSE OF ACTION**

(For Declaratory Relief Regarding Sequoia's Breach of its Duty to Reimburse Amounts Paid to Defend Claims Asserted Against MCM in the Underlying Action)

35. Great American hereby incorporates paragraphs 1 through 34 as though fully set forth herein.



1           36. An actual controversy has arisen and now exists between Great  
2 American and Sequoia in that Great American contends and is informed and  
3 believes that Sequoia denies that it is obligated to reimburse Great American for  
4 amounts paid by AMCO and/or Great American to defend the claims asserted  
5 against MCM in the Underlying Action.

6           37. Great American desires a judicial determination that Sequoia is required  
7 to reimburse Great American for amounts paid by AMCO and/or Great American to  
8 defend the claims asserted against MCM in the Underlying Action.

9                                   **THIRD CAUSE OF ACTION**

10           (For Declaratory Relief Regarding Sequoia's Obligation to Reimburse Amounts  
11           Paid to Settle Claims asserted Against MCM in the Underlying Action)

12           38. Great American hereby incorporates paragraphs 1 through 37 as though  
13 fully set forth herein.

14           39. An actual controversy has arisen and now exists between Great  
15 American and Sequoia in that Great American contends and is informed and  
16 believes that Sequoia denies that it is obligated to reimburse Great American for  
17 amounts paid to settle the Underlying Action on behalf of MCM.

18           40. Great American desires a judicial determination that Sequoia is required  
19 to reimburse Great American for amounts paid to settle the claims asserted against  
20 MCM in the Underlying Action.

21                                   **FOURTH CAUSE OF ACTION**

22                                   (For Equitable Contribution - Defense)

23           41. Great American hereby incorporates paragraphs 1 through 40 as though  
24 fully set forth herein.

25           42. AMCO defended claims asserted against MCM in the Underlying  
26 Action without contribution from Sequoia, despite a potential for coverage giving  
27 rise to a duty to defend under the Sequoia Policy.



Underlying Action on behalf of MCM in excess of the applicable limit of the AMCO Policy;

4. That Great American, as assignee of AMCO's right to recover amounts paid by AMCO to defend claims against MCM in the Underlying Action, is entitled to recover from Sequoia such amounts paid by AMCO to defend MCM to the extent such amounts exceeded AMCO's properly allocated share in the defense;
5. For damages in an amount to be determined at the time of trial;
6. For interest at the applicable legal rate on any amounts that Great American is determined to be entitled to recover herein, from the dates such amounts were paid by Great American and/or AMCO;
7. For recovery of its costs of suit herein; and
8. For such other relief as the Court herein deems just and proper.

Dated: July 23, 2015

TRESSLER LLP

By: /s/Linda Bondi Morrison  
Linda Bondi Morrison, Esq.  
Ryan B. Luther, Esq.  
Attorneys for Plaintiff  
GREAT AMERICAN INSURANCE  
COMPANY

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